

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

H. RAY LAHR,)
Plaintiff,)
v.) No. CV 03-08023-AHM
NATIONAL TRANSPORTATION SAFETY))
BOARD and CENTRAL INTELLIGENCE))
AGENCY,)
Defendants.)

)

SUPPLEMENTAL DECLARATION OF ALAN W. TATE

I, ALAN W. TATE, hereby declare and say:

1. I continue to serve as the Acting Chief, Public Information Programs Division, Information Management Services (PIPD/IMS), for the Central Intelligence Agency (CIA or Agency). I have held this position since 26 March 2004, at which time I also became Acting CIA Information and Privacy Coordinator (Coordinator). This is the second declaration I have submitted in this case. I respectfully refer the Court to my earlier Declaration of 16 April 2004. In my capacities as Acting Chief, IMS/PIPD, and Coordinator, I am responsible for, among other things, managing the Freedom of Information Act (FOIA) and Privacy Act (PA) programs in the CIA.

APPROVED FOR
RELEASE DATE:
17-Sep-2010

2. Through the exercise of my official duties, I am aware of Plaintiff's Opposition to the CIA's Motion for Stay of Proceedings, including Plaintiff's assertions regarding CIA's handling of his earlier request and the alleged relevancy of the nature and timing of that reply for Defendant's motion to stay the proceedings now pending before this Court.

3. The purpose of this supplemental declaration is to describe and distinguish CIA's handling of Plaintiff's earlier request and to clarify and further explain why the duration of the stay, as requested by Defendant, is necessary and reasonable. I also include in my description certain additional administrative burdens, which appear particularly relevant given assertions made by plaintiff in his declaration of 29 April 2004.

4. I make the following statements based on my personal knowledge, information made available to me in my official capacity, and the conclusions I reached in accordance therewith.

PLAINTIFF'S EARLIER REQUEST AND CIA'S HANDLING THEREOF

5. In Plaintiff's Opposition memorandum, Plaintiff refers to CIA's handling of an earlier request, as a basis for asserting that the duration of the stay requested by the Defendant is excessive. Neither the circumstances surrounding them nor the requests are the same. Plaintiff states that two-

and-half years ago the CIA was able to respond to his earlier request within the twenty-working day limit and today it asks for another ten months to process the current request. The handling of the one request has no bearing on the other--different time, surrounding circumstances, and responses.

6. By letter dated 10 November 2000, Mr. Lahr requested certain information regarding the TWA 800 accident. After stating "CIA produced a video which . . . showed the aircraft losing the whole nose section and then climbing about 3,000 feet," Mr. Lahr indicated that he "would like to review the process used to arrive at that conclusion. (Italics added.) Would you please provide me a copy of the computer program and the data used to produce that computer simulation." By letter dated 26 January 2001, the CIA acknowledged receipt of Mr. Lahr's 10 November letter, assigning it reference number F-2000-02350 for identification purposes. The CIA then went on to state:

We understand your request to indicate your interest is focused on the separation of the aircraft's nose section from the fuselage, and the related data . . . We have researched this matter, and have learned that the pertinent data, and resulting conclusions, were provided by the National Transportation Safety Board (NTSB). CIA simply incorporated the NTSB conclusions into our videotape.

The letter explained that an agency, who originated information, has responsibility for making decisions about its release and

provided in the letter to Mr. Lahr the address of the appropriate office at NTSB. No further correspondence was received from Mr. Lahr with respect to this request.

7. When Mr. Lahr's first request was received, it was assigned to a FOIA officer for administrative review.² Based on analysis of the request, CIA interpreted the request as asking for information relating to the NTSB conclusion regarding the separation of the nose section from the fuselage. Consequently, CIA referred Mr. Lahr to the NTSB. Thus, plaintiff's first request was not formally accepted for search and consequently did not enter the complex queue. Instead he received a referral response, which is the reason that he received a relatively quick response. Whereas, plaintiff's current request is not only assigned to that queue for search, but will involve an extremely time-consuming manual search at the individual analyst level (as opposed to records systems, i.e., database). And, assuming responsive documents, additional time will be required to review

² Upon receipt of a FOIA request, PIPD personnel review/analyze the request to ensure that it is a perfected request, i.e., meets applicable legal and administrative requirements, including "reasonably describes" records, the record(s)/information sought is within the possession or purview of the Agency, no fees are owed, etc. Once this has been established, experienced personnel in PIPD then search the Management of Officially Released Information (MORI) database to determine if any prior requests have been received on the topic and whether information on the subject in question has been previously reviewed and released by CIA through its various declassification programs. If it is determined that records searches are required, the FOIA officer accepts the request by sending a formal acceptance letter to the requester and at the same time formally tasks those components deemed reasonably likely to possess information on the topic with instructions that a search be made for any responsive records.

them. As was explained in my earlier Declaration (paragraphs 13-14), a records search such as the plaintiff's which seeks underlying information, which is not readily identified, requires the first-hand knowledge and participation of individuals who were actually involved in the production of the CIA animation.

8. The requests are not the same in a key respect. In his Opposition memorandum, Plaintiff states, "the FOIA requests at issue here are comparatively few in number and breadth." This ignores the complex nature of the search and fact that the Plaintiff's current request is for "all records upon which the . . . aircraft flight path climb conclusion was based and the 105 FOIA Requests itemized in the enclosed Excel printout . . ." (30 pages). A true and correct copy of the 8 October 2003 FOIA request is attached as Exhibit 1.

THE CIA'S ESTIMATED TIME FOR COMPLETION OF PLAINTIFF'S
FOIA REQUEST

9. As stated in my earlier Declaration, CIA will treat plaintiff's FOIA request as having been accepted on the date on which the request was received by CIA's FOIA office - 8 October 2003. At that time, the Agency had over 1,500 FOIA requests in queue in various stages of processing; of these,

approximately 865 currently remain ahead of plaintiff's request in the complex queue.

10. At this time, the CIA has not yet completed its search for records responsive to plaintiff's request. Until the number and nature of responsive records are known, I cannot accurately predict the amount of time required for processing. However, based on factors discussed in my earlier Declaration, my best judgment is that the CIA will require 10 months to complete the processing of Plaintiff's request.

11. As was noted in my earlier Declaration, most of the information utilized in CIA's analysis of eyewitness accounts which is presented in the animation is known to have originated with other government agencies and entities; consequently, extensive referral and/or coordination will be required. CIA cannot speak for other agencies nor can we meaningfully consult with them at this time since the records search is not complete. Although the Agency does not have control over other agencies' responses to referrals and coordinations, it is my best estimate that CIA could complete all stages of its processing of CIA documents and respond to Plaintiff within 10 months--that is, by 28 February 2005.

12. At this time, it is impossible to state a date certain when a Vaughn index may be completed since neither the volume

nor nature of responsive records is known. Moreover, by its very nature--describing information withheld and identifying applicable exemptions--such an index cannot be completed until after the substantive review³ of all responsive material has been completed. For this reason, CIA can only provide an estimated completion date. I presently estimate that CIA could complete a Vaughn index within 2-3 months of completing the processing of CIA-originated documents.

CONCLUSION

13. The CIA is making all reasonable efforts to comply with the FOIA's requirements and deadlines. Due to the complicated nature of the Plaintiff's request, the manner and level of the records search, the nature of potentially responsive documents, and the careful, multi-step review the CIA must conduct to prevent the inadvertent release of classified national security, or other exempt information, and upon consideration of what is humanly possible based on the Agency's current resources, my best estimate is, as stated previously, that it will require approximately ten months to complete processing of CIA records and to provide a response to Plaintiff.

³ This includes the review to determine if responsive information is currently and properly classified or otherwise exempt from release under the FOIA.

14. For the above reasons, the CIA submits this declaration in further support of Defendant's Motion for *Open America* Stay until such time as the CIA has completed processing Plaintiff's request.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.
Executed this 6 day of May 2004.

Alan W. Tate

Alan W. Tate
Acting Chief, Public
Information Programs Division